OIC-95
(Rev. 8/83)

United States Bankruptcy Court

For the NORTHERN District of IOWA

IN RE:

ANDREW MARK REDING
a/k/a Mark Reding and
BARBARA KAY REDING,

Debtors.

Chapter 7

Case No. 81-03354

FILED
U.S. BANKRUPTCY COURT S.D.
NORTHERN DISTRICT OF IOWA

MAR 31 1989

BARBARA A. EVERLY, CLERK

JUDGMENT

☒ This proceeding having come on for trial or hearing before the court, the Honorable William L. Edmonds, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable William L. Edmonds, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

that the United States of America, acting through the Farmers Home Administration, is in civil contempt for violation of the discharge order entered by this court on April 5, 1982 and the provisions of 11 U.S.C. § 524.

IT IS FURTHER ORDERED that the United States of America, acting through the Farmers Home Administration, is to pay the debtors Andrew Mark Reding and Barbara Kay Reding the sum of $12,848.00 plus interest from May 1, 1988 at the rate of 5 per cent per annum.

IT IS FURTHER ORDERED that the United States of America pay the debtors $1,626.00 for attorney fees.

UNITED STATES BANKRUPTCY COURT

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3/31/89,

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BARBARA A. EVERLY
Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: 3-31-89

By: Lavis McElhany
Deputy Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

ANDREW MARK REDING a/k/a Mark Reding and BARBARA KAY REDING, Debtors.	)	Chapter 7 Bankruptcy No. 81-03354

MEMORANDUM OF DECISION AND ORDER
RE: DEBTORS' MOTION FOR ORDER OF CONTEMPT

The debtors seek by motion an order of this court finding that the United States of America by and through the Farmers Home Administration has acted in contempt of this court's order of discharge and they seek remedial and punitive remedies. The motion was resisted by the Farmers Home Administration (FmHA). Hearing on the motion and resistance was held on December 1, 1988 at Fort Dodge, Iowa.

The court now issues the following memorandum of decision which includes findings of fact and conclusions of law pursuant to Bankr. R. 7052 and issues the following order. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

This Chapter 7 case was filed on December 29, 1981. Final decree was entered on May 2, 1988. On September 12, 1988, debtors filed their motion to reopen the case for the purpose of filing the motion for order of contempt. The estate was reopened by court order on September 12, 1988 and the motion was filed September 20, 1988.

FINDINGS OF FACT

1. Andrew Mark Reding (REDING) and Barbara Kay Reding, husband and wife, filed their joint voluntary petition under Chapter 7 of the Bankruptcy Code on December 29, 1981.

2. Debtors claimed as exempt their farm homestead, which was mortgaged to FmHA.

3. Initially, debtors believed the homestead acreage had a value in excess of the debt to FmHA, but in May, 1982, they amended their schedules to show FmHA as an undersecured creditor. In the amendment, the debt to FmHA was listed at $80,000.00, while the value of the acreage was shown as $60,000.00.

4. An order of discharge entered in the case on April 5, 1982.

5. Despite the bankruptcy and despite the perceived lack of ownership equity, Mark Reding desired to retain the homestead property. FmHA, however, wanted a voluntary conveyance of the property from Redings. Reding sought help from Congressman Berkley Bedell in retaining the property. Congressman Bedell's office contacted the state director of the Farmers Home Administration in May of 1982 requesting the FmHA to give consideration to Reding's proposal that he continue payment on the homestead loan. Thereafter, discussions took place between Reding and FmHA regarding the continued payment on the loan.

6. Whatever negotiations were ongoing, they appeared to have come to a halt in January of 1983 when FmHA County Supervisor Kenneth E. Blackledge by letter contacted Redings' attorney, David

Opheim. Blackledge wrote Opheim that it was the advice of the FmHA state office that since the bankruptcy discharge, FmHA was prevented from future collection efforts. FmHA requested voluntary conveyance of the security.

7. Sometime between January 20, 1983 and February 7, 1983, the parties again began discussions about Redings' retaining the homestead property. As a result, on February 7, 1983, Blackledge forwarded to Brett Anderson, Redings' then-attorney, copies of a "new promise to pay" which was a penciled-in copy of a proposed promissory note. The new promise to pay was executed by Redings on March 17, 1983.

8. By that document, Redings waived defenses under the Bankruptcy Code and acknowledged and reaffirmed liability to the United States under the secured promissory note originally executed by them on July 16, 1979. Redings agreed to pay the debt according to its terms and any supplementary agreements.

9. Deputy regional attorney for FmHA, Donald R. Kronenberg, Jr., wrote to FmHA state director R. R. Pim in April, 1983 giving the opinion that bankruptcy court approval of the Redings' reaffirmation agreement was not necessary. He further expressed the opinion that the "new promise to pay" was effective. This letter was forwarded to county supervisor Blackledge on April 28, 1983, by Harold J. Laures, Chief, Farmer Programs, FmHA, Des Moines, Iowa.

10. Reding made payments on the "reaffirmed" debt in 1983, 1984, 1985 and 1986.

11. On or about April 1, 1986, Redings executed a new

promissory note in favor of FmHA which effected a reamortization of the reaffirmed real estate mortgage loan. (Government Exhibit A.)

12. Redings also executed a promissory note in favor of FmHA for an operating loan for 1986 and to secure that loan, executed a security agreement dated August 28, 1986. That security agreement granted to FmHA a lien on machinery, equipment and crops.

13. On December 23, 1986, Mark Reding executed a "farm and home plan," FmHA form 431-2, which consisted of a financial statement as of December 23, 1986 and a proposed cash flow for the 1987 year. The farm and home plan proposed by Reding showed a $12,480.00 payment on the mortgage debt.

14. A discussion between Mark Reding and Assistant U. S. Attorney Martin McLaughlin took place in the summer of 1987. At that time, Reding discussed with McLaughlin the FmHA real estate debt and its enforceability. Following Redings' visit with McLaughlin, Reding concluded that he and his wife were not liable on the homestead debt. He conveyed this conclusion to Blackledge.

15. On January 19, 1988, Blackledge contacted Chris Beyerhelm, of the FmHA Des Moines office, on the Reding file. His letter to Beyerhelm is set out in full as follows:

> Attached is the County Office Loan folder for the above borrower.
>
> Mr. Reding visited with Assistant U. S. Attorney Martin McLaughlin this fall in Fort Dodge, Iowa at Bankruptcy Court and understood that the FmHA real estate debt had been eliminated and the real estate was FmHA's. For this reason, he did not want to make his real estate payment of $12,848.00. We did maintain control of $12,848.00 by endorsing a grain sealing check payable to the bank subject to issuance of a cashiers check to FmHA in the amount of $12,848.00. This money is being

held in the bank until the situation is settled.

Apparently what happened is that the Trustee never closed the bankruptcy even though a discharge of debtor was issued on April 5, 1982. A New Promise to Pay was signed on March 17, 1983 and it was determined by OGC on April 20, 1983 that Form FmHA 460-10 signed March 17, 1983 is effective.

I visited with U. S. Attorney McLaughlin today and he feels it may be the borrowers choice now as to continuing paying, voluntary conveyance or foreclosure. He questioned the effectiveness of our Form FmHA 460-10.

Please advise if I should proceed to collect the payment of $12,848.00.

16. Farmers Home Administration maintained that proceeds from 1987 crops also secured the "reaffirmed" real estate debt. FmHA, a payee on a grain sale check, as discussed in the foregoing letter, had agreed to endorse that check to the Ledyard Bank, but subject to issuance to FmHA of a cashier's check in the amount of $12,848.00. Because of the dispute over Redings' obligation under the new promise to pay, the money was deposited in the bank. Because of the dispute over reaffirmation, the grain check which exceeded $60,000.00 and which was payable to Reding, FmHA and the bank in Ledyard was conditionally endorsed by FmHA. FmHA claimed it was to have a return check of $12,848.00. Mark Reding testified that he placed that amount into a special account at the bank in his name only and did not give permission for those funds to be forwarded by the bank to FmHA.

17. On January 25, 1988, Blackledge advised State Bank of Ledyard that in the opinion of the FmHA state office Redings' real estate debt to FmHA was effective and that the January 1, 1988

payment on that debt was owing. Blackledge, therefore, demanded that the bank send it a cashier's check payable to FmHA as required on the FmHA endorsement of the grain check.

18. Beyerhelm apparently reviewed the folder forwarded to him by Blackledge and returned it on January 28, 1988. The letter to Blackledge dated January 28, 1988 stated:

> We are returning the county folder.
>
> There is absolutely no question that the debtor is personally liable for his FmHA debt. This is based on the 460-10, but more importantly on the fact that he executed new notes to FmHA on March 17, 1983 which was re-executed by rescheduling on April 1, 1986.
>
> You should proceed to collect the January 1, 1988, payment.

19. In March, 1988, two offers to buy the homestead were received by Mark Reding. The first dated March 3, 1988 included an offer to buy certain personal property, hog equipment, for which Mark Reding would receive a portion of the purchase price. At the time of this offer, Redings were apparently indebted to Farmers Home Administration on the operating note in the amount of $7,124.88. FmHA declined Redings' request to release all liens.

20. FmHA took the position that the personal property of the debtors described in a U.C.C. 1 financing statement and in a security agreement also secured any real estate notes which might be otherwise undersecured because of the value of the real property. FmHA notified Redings' attorney, Harlen E. Wittkopf, of FmHA's position on cross-collateralization.

21. Wittkopf responded to Blackledge on March 28, 1988

stating that the debtors' position was that the Reding equipment was not collateral for the real estate loan. Wittkopf offered on behalf of Redings to pay off the operating loan in full but wanted a release of the personal property collateral.

22. The second offer to buy, dated April 8, 1988, was received by Redings and again Redings were to receive a portion of the sale price of the homestead to cover personal property, hog equipment.

23. FmHA state director R. R. Pim wrote to Harlan Wittkopf on April 14, 1988. In the letter, Pim concluded that the FmHA operating and real estate loans were cross-collateralized. Pim demanded that before any collateral be released, all FmHA debt be paid.

24. On April 28, 1988, County Supervisor Blackledge contacted Redings by letter and told them he had visited with Martin McLaughlin about McLaughlin's conversation with the Redings on the reaffirmation agreement and that McLaughlin's statements to them were based on "limited information he had that you gave to him." The letter then stated:

> "Based on additional information he now has he indicated the FmHA is probably right in it's (sic) position that you are still personally liable for all your FmHA debt."

The letter then demanded that in order for Redings to be released of their liability, all secured property would be sold or conveyed to the Farmers Home or accounted for at present market value. This was to include real estate, crops, machinery and equipment, etc.

25. On April 28, 1988, Blackledge wrote to the State Bank of Ledyard, again demanding a cashier's check in the amount of $12,848.00 pursuant to its restrictive endorsement on a grain check in the amount of $63,745.74. The bank sent the money to FmHA at approximately the end of April, 1988.

26. On May 19, 1988, Blackledge contacted Mark Reding stating that on the recommendation of the FmHA district director, conveyance of the real estate to Farmers Home was declined. FmHA asked for a settlement proposal on the Reding debt which would include all secured property including real estate and personal property listed in the security agreement. The letter contained the following statement:

> "As I have mentioned before if your attorney feels your bankruptcy changed, or invalidated any of our security instruments or either of your loans, this is the time to present those facts. You have been advised of Farmers Home Administration's position concerning our lien position."

27. At one point in order to facilitate sale of the homestead and personalty and after the second offer, Reding told FmHA to take the entire sales proceeds, apparently agreeing to give up on his claim to the equipment.

28. Blackledge recalls Reding offered to pay the balance of the operating loan in order to obtain a release on the lien of the personal property. It was the position, however, of the Farmers Home Administration that the property covered by the security agreement also covered the reaffirmed real estate debt.

29. Redings have abandoned the homestead and now reside in

Kentucky.

DISCUSSION

I.

The debtors claim that FmHA is in civil contempt for having violated the terms of 11 U.S.C. § 524 and the discharge order entered in this case. The essence of the motion is that the debtors and FmHA entered into a reaffirmation agreement which was not in accordance with 11 U.S.C. § 524(c) and therefore was not enforceable by FmHA. The government's efforts to enforce it, therefore, violated § 524 of the Bankruptcy Code and the discharge order.

Debtors request the court to enjoin FmHA from any further action to collect any debt deficiency relating to the reaffirmation agreement. Second, debtors ask that FmHA be ordered to release any collateral other than the real estate when the operating loan has been paid in full. Additionally, the debtors ask that the payments FmHA received from the Ledyard State Bank be returned to the debtors with interest. Debtors also request that FmHA be assessed the cost of the proceedings plus reasonable attorney fees and a fine.

In order to be found in civil contempt, a party must fail to comply with a court order. The court order must be an enforceable order that is clear and specific which unambiguously commands such

party to perform or refrain from performing in accordance with the order. Stein & Day, Inc. v. Coordinated Systems & Services Corp. (In re Stein & Day), 83 B.R. 221, 226 (Bankr. S.D. N.Y. 1988) (citations omitted).

A discharge in a case under title 11 "operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor, or from property of the debtor, whether or not discharge of such is waived . . . ." 11 U.S.C. § 524(a)(2) (1982). A discharge order was filed in this case on April 5, 1982. The discharge order stated:

> "3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the debtor whose name is marked above."

The names marked above were Andrew Mark Reding and Barbara Kay Reding.

The injunction provided for in 11 U.S.C. § 524(a)(2) is applicable to all discharged debts unless a reaffirmation agreement was entered into by the debtors and creditor. Section 524(c) of Title 11, as in effect at the time of the debtors' discharge, provided the requirements for the creation of an enforceable reaffirmation agreement which included that

> "(1) such agreement was made before the granting of the discharge under § 727. . . ."

11 U.S.C. § 524(c)(1) (1982).

The language of § 524(c) must be strictly construed. In re

Brown, slip op. 85-2204-C (Bankr. S.D. Iowa, Feb. 19, 1987) at 4, citing In re Gardner, 57 B.R. 609, 611 (Bankr. Me. 1986); In re Jackson, 49 B.R. 298, 302 (Bankr. Kan. 1985); In re Roth, 38 B.R. 531, 536 (Bankr. N.D. Ill. 1984); aff'd., 43 B.R. 484, 487-88 (N.D. Ill. 1984); In re Miller, 13 B.R. 697, 699 (Bankr. E.D. Pa. 1981). The reaffirmation agreement was entered into on March 17, 1983, which was nearly a year after the discharge order of April 5, 1982. Because it was not timely made, the reaffirmation agreement entered into by the debtors and FmHA on March 17, 1983 did not meet the enforceability standards of § 524.

Since the reaffirmation agreement was not enforceable, FmHA was enjoined by § 524(a) from enforcing it. Violations of this injunction may result in punishment for civil contempt. Northway v. Melbourne Savings Bank (In re Northway), No. 88-0055 (Bankr. S.D. Iowa, May 27, 1988), aff'd., No. 88-1458-B (S.D. Iowa, Dec. 28, 1988), citing In re Rhyne, 59 B.R. 276, 278 (Bankr. E.D. Pa. 1986).

FmHA argues that willfullness is required in order for an act to be considered contemptuous--that the plaintiff must show that the parties knowingly and intentionally violated the discharge order. In support of its argument, FmHA cites In re Holman, 92 B.R. 764, 768 (Bankr. S.D. Ohio 1988); Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47 (2nd Cir. 1976), cert. denied, 429 U.S. 1093, 97 S.Ct. 1107, 51 L.Ed. 2d 540 (1977); Endres v. Ford Motor Credit Co. (In re Endres), 12 B.R. 404 (Bankr. E.D. Wis. 1981).

Other courts, however, have held that it is not necessary to show willfullness in order for a party to be held in civil contempt. See McComb v. Jacksonville Paper Co., 336 U.S. 187, 191, 69 S.Ct. 497, 499, 93 L.Ed. 599 (1949); Perry v. O'Donnell, 759 F.2d 702 (9th Cir. 1985); General Signal Corp. v. Donallco, Inc., 787 F.2d 1376 (9th Cir. 1986); In re Edgehill Nursing Home, Inc., 68 B.R. 413 (Bankr. E.D. Pa. 1986); In re Conti, 50 B.R. 142 (Bankr. E.D. Va. 1985); In re Lohnes, 26 B.R. 593 (Bankr. D. Conn. 1983). This court need not decide whether willfullness is required in order for a party to be held in civil contempt because it believes FmHA knowingly and intentionally violated the discharge order. The language of 11 U.S.C. § 524 made it clear that a creditor is enjoined from collecting any discharged debt from the debtor in the absence of an enforceable reaffirmation agreement which meets the requirements of 11 U.S.C. § 524(c). FmHA officials knew or should have known that the debtors were discharged on April 5, 1982 and that its reaffirmation agreement with debtors post-dated the discharge.

II.

The FmHA wrongfully attempted to assert the real estate debt as a personal liability of Redings and to collect it out of Redings' other assets. FmHA demanded and received payment of $12,848 from the Ledyard State Bank. At the time FmHA demanded the bank payment, FmHA officials were aware that the Redings

disputed the validity of the reaffirmation agreement and desired to make no more voluntary payments. FmHA was enjoined from collecting any debt from the debtors under the invalid reaffirmation agreement after it was aware that the debtors disputed the validity of the reaffirmation agreement and did not intend to voluntarily adhere to it. FmHA willfully and knowingly violated the discharge order. Therefore, it is proper to find that FmHA's collection of $12,848 from the State Bank of Ledyard was done in civil contempt. FmHA also violated the court's injunction by attempting to collect the real estate debt out of Redings' other personal property.

In their trial brief filed with this court on December 1, 1988, the debtors requested the court to allow them to recover all monies paid pursuant to the improper reaffirmation agreement. The motion for contempt filed on September 20, 1988 did not request the court to allow the debtors to recover all monies paid pursuant to the improper reaffirmation agreement.

FmHA's acceptances of payments under the unenforceable reaffirmation agreement, however, were not contemptuous. Prior to 1988, the debtors voluntarily made the payments on the reaffirmation agreement. There is no evidence that any coercion or other improper activity was used to convince the debtors to sign the reaffirmation agreement. Moreover, debtors initiated negotiation on the reaffirmation agreement, entered into it and paid on it in an attempt to keep the possession of their real estate. During the years payments were made, the debtors did retain possession of the property.

In their motion for contempt, the debtors also request the court to order FmHA to release any collateral other than the real estate when the operating loan has been paid in full. At the trial, the debtors' attorney argued that the FmHA's attempts to enforce its cross-collateralization was contemptuous.

Because the reaffirmation agreement is unenforceable, FmHA should not be permitted to enforce any cross-collateralization agreement with debtors. However, the court believes it is premature to find FmHA acted in contempt by failing to release its security interest in personal property.

There is no indication that the debtors have legally tendered full payment of the operating loan to FmHA. FmHA is not required to terminate its financing statements covering the debtors' personal property until the debtors actually pay the secured operating debt in full. Iowa Code § 554.9404 governs the necessity and time limits for filing a U.C.C. termination statement when a secured debt governed by the U.C.C. is paid in full. The debtors have not yet paid off the operating loan in full. When they do, FmHA should no doubt release upon proper demand. Until then, it is premature for this court to order FmHA to release its security interest in the debtors' personal property.

The debtors also want the court to force the FmHA to release its real estate mortgage.

The debtors assert that FmHA elected their remedy by receiving a pro rata distribution from the trustee as an unsecured creditor. Debtors argued in their second brief in support of their motion

that the filing of a claim as unsecured by FmHA and participation in distributions from the general assets of the estate constitute a waiver of its secured claim.

The court is not persuaded by this argument, but need not decide the issue because it views it as one not properly before the court in this contempt proceeding.

III.

The next issue is whether a bankruptcy judge has the power to find a party in civil contempt. The debtors argue that the bankruptcy court has the power to determine civil contempt in instances involving core proceedings. FmHA argues that the bankruptcy court is without jurisdiction over matters of civil contempt.

Bankruptcy courts have been divided on the question of whether bankruptcy judges possess both constitutional and statutory authority to hold parties in civil contempt. The Ninth Circuit Court of Appeals is the only federal appellate court that has ruled on this issue. The court held in Plastiras v. Idell (In re Sequoia Auto Brokers, Ltd., Inc., 827 F.2d 1281 (9th Cir. 1987) that there was no express statutory authority permitting Article I bankruptcy courts to exercise civil contempt power. The court stated that bankruptcy judges have jurisdiction to exercise a contempt power only if they have a statutory basis of authority. Id. at 1284. The creditors and government argued in Sequoia that the substantive

power of bankruptcy judges to enter orders in core proceedings and the authorization that the court issue "necessary or appropriate" orders under 11 U.S.C. § 105(a) includes contempt power.

The court noted that bankruptcy courts previously had contempt power pursuant to 11 U.S.C. § 1481. However, the court noted that § 1481 was repealed by the 1984 amendments. The court stated that the provisions of 28 U.S.C. § 157 which gives bankruptcy judges authority over core proceedings does not also give them a contempt power in those proceedings. The court said "it simply does not follow that 'because an official was empowered to make decisions, he must also be able to punish those who refuse to accede to them.'" The court also held that 11 U.S.C. § 105(a) is not a source of contempt power. The court stated "the broad, general language of § 105(a) is not a surrogate for the specific grants of limited contempt authority repealed by the 1984 amendments." The court in Sequoia did not address the issue of whether it was constitutional for a bankruptcy judge to find a party in contempt.

Section 105(a) of Title 11 provides:

> "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to be preclude the court from, sua sponte, take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent any piece of process."

A number of bankruptcy courts have construed this provision to conclude that bankruptcy judges have civil contempt powers. See In re Stephen W. Grosse, P. C., 84 B.R. 377, 385-86 (Bankr. E.D. Pa.

power was eliminated by the repeal of 28 U.S.C. § 1481. The court noted that section 1481 did not grant contempt power at all. The court found that the repeal of 28 U.S.C. § 1481 was without significance and did not affect the inherent power of a bankruptcy court to exercise civil contempt power. Miller at 676.

The court also noted that there is ample authority to exercise civil contempt power by implication based on 11 U.S.C. § 105. The court stated:

> "It defies logic to conclude that the rights of a private litigant could be vindicated through imposition of sanctions under procedural rules, Bankruptcy Rules 7016 (violation of pre-trial orders), 7037 (violation of discovery rules) and 9011 (violation of certification rule), yet the rights of a discharged debtor cannot be protected by the very Bankruptcy Court which issued the discharge. Based on Sect. 105 it would be shee sophistry indeed to urge that a vindication of a debtor's right by an order entered by the bankruptcy court under a general reference is not necessary to carry out the provisions of Title 11."

Miller at 677.

The court in Miller also found support for the contempt power in Bankr. R. 9020. The court stated:

> "Since neither the Supreme Court nor Congress had an difficulty accepting this grant of civil contempt power by Rule 9020 and its predecessors as far back as 1973, it is reasonable to conclude that the revised Bankruptcy Rule 9020 furnishes more than ample authority for bankruptcy courts to exercise civil contempt power committed in a case or in a proceeding arising in, arising under, or related to a Title 11 case . . ."

Id. at 678. In conclusion, the court stated:

> "It would be ironic indeed and nothing more than an exercise in futility to grant a debtor a discharge, together with a permanent injunction prohibiting the pursuit of the debtor after discharge in an attempt to enforce discharged pre-petition debts, if the very court which granted the discharge would be powerless to

1988); In re Haddad, 68 B.R. 944, 948 (Bankr. D. Mass. 1987). The court stated in Grosse at 385 that the amendment to the Bankruptcy Code of 1986 makes it clear that Congress meant § 105 to serve as a statutory basis for the civil contempt power of bankruptcy judges. See also Northway v. Melbourne Savings Bank (In re Northway), slip op. 88-0055 (Bankr. S.D. Iowa, May 27, 1988); aff'd. slip op. 88-1458-B (S.D. Iowa, Dec. 28, 1988).

The procedures for contempt proceedings in bankruptcy courts is set forth in Bankr. R. 9020.

The provisions of Bankr. Rule 9020 indicate that the contempt proceeding is to be initially heard by the bankruptcy court. An entity found in contempt may object to a bankruptcy judge's contempt order. See Bankr. Rule 9020(c). If the essential objections were filed in ten days, the objecting party is entitled to review de novo by the district court pursuant to Bankr. R. 9033(d).

Since Rule 9020 provides for objections to civil contempt, orders by bankruptcy judges have been declared to be constitutional. See In re Stephen W. Grosse, P.C., 84 B.R. 377, 387-88 (Bankr. E.D. Pa. 1988); Miller v. Mayer (In re Miller), 81 B.R. 669 (Bankr. M.D. Fla., 1988).

A Florida bankruptcy court has rejected the reasoning and conclusion of the 9th Circuit's decision of Sequoia. Miller v. Mayer (In re Miller), 81 B.R. 669, 675 (Bankr. M.D. Fla. 1988). The court in Miller disagreed with the 9th Circuit's reasoning that a bankruptcy judge's statutory authority to exercise civil contempt

enforce an obedience of the order and permit violation of the permanent injunction with impunity." Id.

This court finds the decision in Miller v. Mayer (In re Miller), 81 B.R. 669 (Bankr. M.D. Fla. 1988) to be persuasive. Therefore, this court believes that it has the power to determine and hold an entity in civil contempt.

IV.

FmHA argues also that the court cannot order the United States to pay compensatory damages, punitive damages, attorney fees and costs or a fine since there has been no waiver of sovereign immunity.

The United States as a sovereign is immune from a suit unless it has expressly waived such immunity and consented to the suit. United States v. King, 395 U.S. 1, 4, 89 S.Ct. 1501, 1502, 23 L.Ed.2d 52 (1969).

In this court's view, the doctrine of sovereign immunity does not bar a finding of civil contempt against the United States. There is ample support for this view in the law. In re Conti, 50 B.R. 142, 145 (Bankr. E.D. Va. 1985); In re Burrow, 36 B.R. 960, 964 (Bankr. D. Utah 1984); In re Norton, 15 B.R. 623 (Bankr. E.D. Pa. 1981) aff'd. 32 B.R. 698 (E.D. Pa. 1982) rev'd. on other grounds, United States v. Norton, 717 F.2d 767 (3rd Cir. 1983); In re Hackney, 20 B.R. 158 (Bankr. D. Idaho 1982); In re Mealey, 16 B.R. 800 (Bankr. E.D. Pa. 1982).

V.

FmHA argues that the issue of whether the reaffirmation agreement was valid was not properly before the court and therefore the court cannot decide the validity of FmHA's lien. FmHA contends that an action to determine the validity of a reaffirmation agreement should be brought in a bankruptcy court as an adversary proceeding under Rule 7001 or a contested matter under Rule 9014. The court disagrees. In order to determine whether FmHA was in contempt for violation of the discharge order, the court must by necessity determine the enforceability of the reaffirmation agreement. It was not necessary to have an adversary proceeding or a separate contested matter to determine the validity of the reaffirmation agreement.

FmHA argues also that the hearing on the motion for contempt was brought without any procedural authority and therefore should be summarily dismissed. FmHA contends that notice of a contempt proceeding may be given only on the court's notice or by the U. S. Attorney or by an attorney appointed by the court by their application pursuant to Bankr. R. 9020(b).

Rule 9020(b) provides:

> Contempt committed in a case or proceeding pending before a bankruptcy judge . . . may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States Attorney or by

an attorney appointed by the court for that purpose. The motion for an order of contempt filed on September 20, 1988 indicates that a copy of the motion was sent to the United States Department of Agriculture, Farmers Home Administration in Des Moines, Mr. Kenneth Blackledge, Mr. Chris Beyerhelm and Mr. R. R. Pim. The motion specifically states that the debtors move the court for a determination that FmHA was in civil contempt of the bankruptcy court for violating and disregarding the terms of 11 U.S.C. § 524 and the discharge order. A notice setting hearing on a motion for order of contempt was sent by this court on October 6, 1988. A copy of the notice was sent to the U. S. Attorney. The notice set December 1, 1988 as the date for hearing on the motion for order of contempt. FmHA and its officials received a copy of the motion for order of contempt. Therefore, FmHA was certainly aware of the essential facts constituting any contempt charged and were aware that the contempt charge was civil. The U. S. Attorney received a copy of the notice setting hearing nearly two months prior to the date of the hearing. The U. S. Attorney represents FmHA in matters before the bankruptcy court and did so in the hearing on the motion for contempt in this case. Therefore, FmHA or its officials cannot make the argument that it was unaware of the contempt hearing. FmHA certainly had a reasonable time for the preparation of its defense to the motion for contempt. The notice provisions set forth in Bankr. R. 9020 were substantially complied with. Therefore, this matter should not be summarily dismissed.

VI.

The debtors are entitled to compensatory damages in the amount of $12,848 plus interest from the date in which Ledyard Savings Bank released money to FmHA. Interest should accrue at the rate of five per cent per annum. Iowa Code § 535.2(b). Damages in this amount are necessary to enforce the injunction under 11 U.S.C. § 524(b). The damages are in no way punitive nor are they in the nature of a fine. FmHA clearly violated the discharge injunction order and therefore should not be entitled to retain the money that it obtained under the reaffirmation agreement once the debtors made it clear that they no longer intended to make any payments.

The debtors seek a fine in an amount that the court deems reasonable. Additionally, the debtors asked for punitive damages by voiding the security interest and mortgages of FmHA. The court will not issue any fines or grant punitive damages to the debtors for the contemptuous activities. The assessment of fines or punitive damages against FmHA, as an agency of the United States, would be barred by the doctrine of sovereign immunity.

The debtors have also requested the court to order the United States to pay attorney fees and costs involved in this contempt proceeding. The debtors' attorney filed with the court on December 1, 1988 an itemization of services rendered by the Walker law office. The total amount of legal fees requested by the debtors total $1,754.00. A review of the itemized fee statement indicates

that the total amount was miscalculated.

FmHA argues that the government is not liable for attorney fees and costs since there was not an express statutory waiver of sovereign immunity. FmHA also argues that attorney fees can only be recovered if the court finds it acted in bad faith or for oppressive reasons. FmHA contends the debtors have failed to state authority for the court to grant attorney fees.

A prevailing party in a civil action against the United States may be awarded attorney fees and expenses pursuant to 28 U.S.C. § 2412, which is often referred to as the Equal Access to Justice Act. Section 2412(b) provides:

> "Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award."

The Tenth Circuit Court of Appeals has held that the Equal Access to Justice Act (28 U.S.C. § 2412) constitutes a waiver of sovereign immunity. Vibra-Tech Engineers, Inc. v. United States, 787 F.2d 1416 (10th Cir. 1986).

FmHA was in violation of the discharge order and the injunction set forth in 11 U.S.C. § 524(b). FmHA's position regarding the validity of the reaffirmation agreement was clearly unreasonable. FmHA argues that each party is responsible for its own attorney fees under the so-called "American Rule" unless there is

some showing of bad faith.

This court does not believe it is necessary for a prevailing party to show that an act of civil contempt was willful in order to recover attorney fees. See In re Newlin, 29 B.R. 781, 787 (E.D. Pa. 1983). Even if it is necessary to show bad faith in order for the debtors to collect attorney fees, it can be found in this case that FmHA did act in bad faith or for oppressive reasons. There was a clear violation of the discharge order and the statutory provision regarding discharge.

The court in In re Newlin, 29 B.R. 781 (Bankr. E.D. Pa. 1983) held that attorney fees could be assessed by the bankruptcy judge against the IRS since the IRS was found in civil contempt for violation of the automatic stay. The court stated "an opposite conclusion would mean the government could engage in dilatory tactics and ignore court orders in a bankruptcy proceeding without regard to the legal expenses imposed on the opposing party." Id. at 787.

This court will consider the statement of services rendered filed with this court on December 1, 1988 as an application for attorney fees pursuant to 28 U.S.C. § 2412. The debtors are only entitled to receive reasonable attorney fees. Therefore, the court will analyze the application to determine which of the services rendered were reasonable with regard to the contempt motion.

Robert Walker did not become involved in this bankruptcy case until around April 25, 1988. Therefore, it was necessary for Walker to review the file and determine any possible action that

Mark Reding may have against FmHA. The court concludes that all services rendered by Robert Walker from April 25, 1988 through July 14, 1988 were reasonable services. The total number of hours billed by Robert Walker during this period was 12.8 hours. Once it was determined that a motion for contempt should be filed, Walker spent a total of 12.75 hours drafting and researching the contempt issue. The court finds that the hours spent researching and drafting exceeded what was reasonably necessary. Therefore, the court will only allow the debtors to recover 8 hours of legal services with regard to the drafting and researching of the contempt issue.

The conference to review motions on September 9, 1988 and the reviewing and arranging of file on September 12, 1988 were not reasonable services of the debtors' attorney. Therefore, the court will not allow any recovery for this time. The court will allow compensation for counsel's listening to the 7-21-87 hearing tape. The phone conversations to Mark Reding and Charles Walker, the reviewing of the file for hearing and the preparation of the resistance to United States' continuance on November 26 and 29, 1988 were reasonable services. Therefore, the debtors are entitled to recover compensation for these services.

The court finds that the Walker law office rendered 23.05 hours of reasonable services prior to the hearing on the motion for contempt. Robert Walker charges an hourly rate of $60.00 for the pretrial legal services, which this court finds reasonable.

Robert Walker rendered three hours of legal services for the

attendance at the hearing on the motion of contempt on December 1, 1988. His hourly rate is $72.00, which this court finds to be reasonable. The legal fee application filed by the debtors indicates that three hours of secretarial services were rendered in this case. Secretarial services are overhead of a law firm and therefore are not recoverable as legal fees.

The court finds that the debtors are entitled to recover attorney fees from the United States government in the amount of $1,626.00.

ORDER

IT IS ORDERED that the United States of America, acting through the Farmers Home Administration, is in civil contempt for violation of the discharge order entered by this court on April 5, 1982 and the provisions of 11 U.S.C. § 524.

IT IS FURTHER ORDERED that the United States of America, acting through the Farmers Home Administration, is to pay the debtors Andrew Mark Reding and Barbara Kay Reding the sum of $12,848.00 plus interest from May 1, 1988 at the rate of 5 per cent per annum.

IT IS FURTHER ORDERED that the United States of America pay the debtors $1,626.00 for attorney fees.

So ordered, 3/31/89,

William L. Edmonds, Bankruptcy Judge

cc: Robert Walker,
Atty. for Debtors
U. S. Attorney
James Cossitt, Trustee
U. S. Trustee
on 3/31/89, DM

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

IN RE:	)	CHAPTER 7
ANDREW MARK REDING a/k/a MARK REDING and BARBARA KAY REDING,	)	Bk. No. X-81-03354
Debtors.	)	RECEIPT AND SATISFACTION OF JUDGMENT

COMES NOW the debtors, Andrew Mark Reding and Barbara Kay Reding, and acknowledge receipt of a check made payable to Robert Walker in the amount of $504.00 and satisfy in total the judgment entered herein by the court on March 31, 1989 as amended by an order filed herein on July 14, 1989. This satisfaction is intended to include all attorneys fees and costs.

A Mark Reding
ANDREW MARK REDING

Barbara Kay Reding
BARBARA KAY REDING

Robert E Walker
ROBERT WALKER

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

IN RE:	)	CHAPTER 7
ANDREW MARK REDING a/k/a MARK REDING and BARBARA KAY REDING,	)	Bk. No. X-81-03354
Debtors.	)	RECEIPT AND SATISFACTION OF JUDGMENT

COMES NOW the debtor, Andrew Mark Reding and Barbara Kay Reding, and acknowledge receipt of a check made payable to Robert Walker in the amount of $1,626.00 and satisfy in total the judgment entered herein by the court on March 31, 1989, pursuant to the court's order of March 31, 1989. This satisfaction is given without waiving any right to request further attorneys fees as part of a modification proceeding to be held on July 13, 1989.

Andrew Mark Reding
ANDREW MARK REDING

Barbara Kay Reding
BARBARA KAY REDING

Robert Walker
ROBERT WALKER
Attorney for Debtors

Copy handed to
filing attorney
on date filed

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

IN RE:	)	CHAPTER 7
	)	
ANDREW MARK REDING	)	Bk. No. X-81-03354
a/k/a MARK REDING and	)	
BARBARA KAY REDING,	)	
	)	RECEIPT AND PARTIAL
Debtors.	)	SATISFACTION OF JUDGMENT
	)	

COMES NOW the debtor, Andrew Mark Reding, and acknowledges receipt of a check from the Farmers Home Administration in the amount of $13,544.96 and partially satisfies the judgment as it relates to the $12,848.00 due plus interest from May 1, 1988. This satisfaction specifically does not include attorneys fees which remain to be paid.

A. Mark Reding
ANDREW MARK REDING

Charles D. Walker
CHARLES WALKER
Attorney for Debtor

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